

STATE OF MINNESOTA
BUREAU OF MEDIATION SERVICES
IN THE MATTER OF INTEREST ARBITRATION BETWEEN

NOBLES COUNTY, WORTHINGTON
 MINNESOTA,

EMPLOYER,

-and-

MINNESOTA TEAMSTERS PUBLIC &
 LAW ENFORCEMENT UNION, LOCAL 320

UNION.

ARBITRATOR'S AWARD
 BMS Case NO. 15PN0624
 INTEREST ARBITRATION

ARBITRATOR:	Rolland C. Toenges
DATE OF CERTIFICATION TO ARBITRATION:	June 16 2015
DATE ARBITRATOR NOTIFIED OF SELECTION:	October 1, 2015
DATE OF HEARING:	January 26, 2016
DATE OF POST HEARING BRIEFS:	February 9, 2016
DATE OF AWARD	February 19, 2016

ADVOCATES

FOR THE EMPLOYER:

Terrance J. Foy, Attorney
 Ratwik, Roszak, Maloney, P.A.
 730 Second Avenue South
 Suite 300
 Minneapolis, MN 55402

FOR THE UNION:

Martin H.R. Norder, Attorney
 Kelly & Lemmons, P.A.
 223 Little Canada Road E.
 Suite 200
 Saint Paul, MN 55117

WITNESS

Stacy (Veen) Davis, Correctional Officer, Nobles County Jail

ALSO PRESENT

Gene Metz, County Commissioner, Nobles County
Bob Demuth, County Commissioner, Nobles County
Tom Johnson, County Administrator, Nobles County
Sue Luing, HR Director & Deputy County Administrator, Nobles County
Terry Neuberger, Business Agent, Teamsters Local 320

ISSUES IN DISPUTE

ITEM #1. Shift Differential

ITEM #2. Wages for 2015.

ITEM #3. Wages for 2016.

ITEM #4. Wages for 2017

JURISDICTION

The instant matter came on for hearing pursuant to a determination by the Commissioner, Minnesota Bureau of Mediation Services (BMS), that the Parties had reached an impasse in their attempt to negotiate an agreement setting forth certain terms and conditions of employment for years 2015, 2016 and 2017.

The Parties selected Rolland C. Toenges to arbitrate the issues in dispute and bring resolution to the matter.

Arbitration of the instant matter is being conducted in accordance with the provisions of the Minnesota Public Employment Labor Relations Act, as amended, 179A.01 – 179A.30 (PELRA). Under PELRA, 179A.16, the employees at issue are defined as “Essential Employees.” An impasse involving Essential Employees is

required to be resolved via compulsory binding arbitration, as Essential Employees are barred from conducting a work action.

A hearing on the issues at impasse was conducted on January 26, 2016 in the offices of Nobles County, Worthington, Minnesota. The Parties were afforded full opportunity to present evidence, testimony and argument bearing on the matters at impasse. Both Parties submitted voluminous binders into evidence, containing documentation supporting their respective cases.

Being there was no request for other than conventional arbitration, the Arbitrator has the authority to award the final position of either party, or to fashion an award that the Arbitrator believes will best serve the interests of the Parties.

There was no request for a stenographic record of the hearing. The Parties agreed to submit Post Hearing Briefs on or before February 9, 2016.

Post Hearing Briefs were received by the Arbitrator on February 9, 2016 and the hearing was closed as of that date.

BACKGROUND

Nobles County (Employer or County) is located in southwestern Minnesota and borders Iowa. The County has a population of approximately 21,000. Nobles County covers approximately 723 square miles. It contains 11 cities and 20 townships. The largest city is Worthington, which is also the county seat. Nobles County is included in Minnesota Economic Development Region #8.

Nobles County provides traditional county government services, including law enforcement (jailing) services. The employees at issue, in the instant matter, are members of the County's Sheriff Department and classified as Jailers. Jailers are classified as essential employees by state statute. The employees at issue in the

instant matter consist of some 12 Jailers.¹ Nobles County has two additional essential bargaining units with employees in the job classes of Sheriff's Deputy and Jail Sergeant.

Minnesota Teamsters Public and Law Enforcement Employees Union, Local 320 (Union) is the exclusive representative of Nobles County Jailers. The Employer and Union are Parties to a collective bargaining agreement (CBA) dated January 1, 2012 through December 31, 2014. The Parties have reached agreement on a succeeding CBA setting forth all terms and conditions of employment effective January 1, 2015 through December 31, 2017, except for the matters at issue in the instant proceeding. The issues being arbitrated in the instant proceeding will become part of the CBA effective January 1, 2015 through December 31, 2017.

ISSUES TO BE ARBITRATED

ITEM #1. Shift differential, new language, Article 23.2

ITEM #2, Wages for 2015 – amount of increase. Article 23.1

ITEM #3, Wages for 2016 – amount of increase. Article 23.1.

ITEM #4, Wages for 2017 – amount of increase. Article 23.1

FINAL POSITION OF THE PARTIES

UNION POSITION, ITEM #1:

Article 23.2, New Language:

23.2 Employees covered under this collective bargaining agreement shall be paid an additional \$1.50 per hour for all hours worked between 5 p.m. and 7 a.m. as a shift differential.

¹ Union Exhibit #1.

EMPLOYER POSITION, ITEMS #1:

Article 23.2.

Shift differential shall not be established or included in the Parties agreement.

UNION POSITION ON ITEMS #2, 3 & 4:

Article 23.1. Pay Plan – Transition to New Pay Scale and Amount of General Increase:

The Union proposes the following transition to the new pay scale on January 1, 2015 and general increases to be effective on January 1 of each year (see Appendix A).

Effective on January 1, 2015, Employees in this bargaining unit shall transition to the new pay scale and advance one step;

2015: 1% General Increase
 2016: 2.25% General Increase
 2017: 2.50 General Increase

EMPLOYER'S POSITION OF ITEMS #2, 3 & 4:

Article 23.1 Pay Plan – Transition to New Pay Scale and Amount of General Increase:

Effective January 1, 2015, incorporate the 2014 wage compensation study and placement of employees on the new wage schedule at new grade and step. Employees shall be eligible for step movement on their anniversary date subject to [Article] 21.1.1 (satisfactory performance).

Effective January 1, 2016, a 2.25% general wage adjustment. Employees shall be eligible for step movement on their anniversary date subject to [Article] 21.1.1 (satisfactory performance).

Effective January 1, 2017, a 2.50 % general adjustment. Employees shall be eligible for step movement on their anniversary date subject to [Article] 21.1.1 (satisfactory performance)

EXHIBITS²

UNION EXHIBITS:

- U-1. Economic Development Regions
- U-2. County of Nobles Labor Agreement 2012 – 2014
- U-3. Union Position Statement – Shift Differential (May 18, 2015)
- U-4. Amended Request for Final Positions Certification to Arbitration (June 16, 2015).
- U-5. Union final position statement – shift differential and wages (June 24, 2015).
- U-6. Nobles County final position statement – shift differential and wages (June 23, 2015).
- U-7. County of Lincoln Labor Agreement
- U-8. County of Rock Labor Agreement
- U-9. County of Murray Labor Agreement
- U-10. County of Cottonwood Labor Agreement
- U-11. City of Worthington Labor agreement
- U-12. Nobles County Jail Detention Info.
- U-13. Nobles County Sheriff Booking Info.
- U-14. Jailers Schedules
- U-15. Nobles County Wage Study – Jailer³
- U-16. Pay Equity Report
- U-17. Salary Survey

EMPLOYER EXHIBITS:

- E-1. General Considerations of Comparability, pages 1-42
- E-2. Collective Bargaining Agreement, Nobles County Courthouse and Library Employees, January 1, 2015 – December 31, 2017.
- E-3. Collective Bargaining Agreement between Nobles County and AFSCME, covering Public Works Employees.
- E-4. Collective Bargaining Agreement between Nobles County and Teamsters Local 320, covering Family Service Employees.
- E-5. Collective Bargaining Agreement between Nobles County and AFSCME. Covering Public Health Employees.
- E-6. Collective Bargaining Agreement between Nobles County and Teamsters, Local 320, covering Supervisory Essential Employees.
- E-7. Collective Bargaining Agreement between Nobles County and Teamsters

² While it is customary for the Arbitrator to reference each exhibit entered into evidence, some will be summarized by subject in the instant matter due to the volume of exhibits presented.

³ Union Exhibit #15 – 2014 wage rate for Jailers projected to increase from 10.65% to 21.08 % in 2017.

Local 320, Non-Licensed Essential Employees – January 1, 2012 – 2014.
 E-8. Minnesota Teamsters Local 320 and Nobles County, BMS Case No.
 15PN0458., (Richard John Miller, January 4, 2016).

POSITIONS OF THE PARTIES

THE UNION'S POSITION IS SUPPORTED WITH THE FOLLOWING:

SHIFT DIFFERENTIAL:

- The external market pattern favors the awarding of shift differential payment to the Noble County Jailers.
- Dispatchers for the City of Worthington, who work alongside and interact with Nobles County Jailers, receive \$0.26 per hour for hours worked between 11:00 p.m. and 6:00 a.m.
- It is noteworthy that of the nine counties located in Region 8 (the region in which Nobles County is located), four counties provide shift differential payment to employees.
- It is also noteworthy that of the five contiguous counties three already provide shift differential.
- The type of employee receiving the aforementioned shift differential include Jailer/Dispatcher.
- Although conditions for shift differential payment varies in these counties, payment ranges from \$.10 to \$3.75 per hour.
- The majority of bookings into the Nobles County Jail take place between 5:00 p.m. and 7:00 a.m., a period typical of when shift differential is paid.
- Although Nobles County Jail is used primarily for inmates from Nobles County and the City of Worthington, it is also used by several other law enforcement agencies, including U.S. Immigration and Custom Enforcement, Minnesota Department of Corrections and work release inmates.
- Nobles County Jail also houses inmates from other Region 8 counties that have a smaller jail.

- Jailers are not able to bid shifts. They work nine weeks on day shift and seven weeks on night shift.
- Jailers typically work two 8-hour shifts and two 12-hour shifts for a 40-hour week.
- Jailers typically work every other weekend. There are typically four or more Jailers on duty, except between 3:00 a.m. and 6:00 a.m., when there are three on duty.
- The schedule Jailers work causes high turnover due to difficulty in having a family life.
- Of 12 Jailers shown on the seniority list, four have less than a year of experience working in the jail.
- Of the 18 Jailers listed on the 2012 schedule, only five are still working in the jail.⁴
- The schedule jailers work causes stress and fatigue, especially when working nights, as there tends to be more troublesome issues with inmates during the night.
- Awarding a shift differential will help compensate jailers for the additional stress associated with working night shifts.
- The Jailer's position for a \$1.50 shift differential, although higher than in other Region 8 counties, is justified by the larger number and variety of inmates housed in Nobles County.

WAGES:

- The Union is in agreement with the Employer's position on wage rates for 2015, 2016 and 2017, with one exception:

⁴ Union Exhibit #14.

- While the Employer's position is to oppose a 1% general increase in 2015, if the Jailers are awarded a shift differential, the Union's position is for the 1% plus the shift differential.
- Jailers should not be punished by receiving a lesser wage increase because they are arguing for a shift differential.
- Awarding the Union's position on wages will not only be consistent with other bargaining units, but will also keep the jailers wage rate competitive with other employees in Region #8.

THE EMPLOYER'S POSITION IS SUPPORTED WITH THE FOLLOWING:

SHIFT DIFFERENTIAL:

- The workload on a particular shift should not qualify an employee for a shift differential.
- The main reason for the differential is not to pay for the added inconvenience, but to create an incentive for working nights on a regular basis.
- Nobles County Jailers are not permanently assigned to the night shift.
- Thus, there is no need to pay a shift differential as an incentive to work nights.
- Since all the Jailers rotate through the day/night schedule, a so-called shift differential is nothing more than a pay increase in excess of the negotiated wage pattern.
- The Employer has experienced little, if any, wage related turnover among Jailers.
- Although thirteen positions turned over in 2013, only five turned over in 2014.
- There is no evidence that anyone left to take a Jailer position elsewhere because of wage reasons, or that there has been a problem maintaining full staffing.

- The Employer's wages are, and will continue to be, above the Region #8 and contiguous county averages.
- The evidence regarding turnover falls far short of establishing compelling circumstances to deviate from the internal settlement pattern.
- Since advent of the Local Government Pay Equity Act (LPEA), arbitrators place the greatest weight on internal consistency in wage and benefit patterns in deciding wage and benefits for essential employees.⁵
- Absent compelling circumstances, deference to established internal relationships is the prevailing rule.⁶
- In 2015, the Employer conducted a job evaluation and market study, which resulted in a new salary range structure.
- The Employer and its other six bargaining units negotiated implementation of the new salary range structure, which was increased 1% for 2014, 2.25% for 2016 and 2.5% for 2017.
- Six of the Employer's seven bargaining units have settled for the aforementioned pattern.
- None of the six units settled, including Sheriff Deputies and Jail Sergeants who also work night shifts, received a shift differential.
- The duties, responsibilities and working conditions, including night hours of the Jailer position, were examined during the job evaluation and market study.
- The Union's final position is to agree to the wage pattern negotiated with the other bargaining units, but asserts that Jailers should receive additional wages under the guise of a "shift differential."

⁵ Minnesota Public Employees Association and County of Faribault, BMS Case No. 13-PN-0350 (Mitau Kircher, 2013).

Faribault County and LELS, BMS Case No. 12-PN-0350 (Toenges, 2012).

⁶ Elkouri and Elkouri, How Arbitration Works, Ch. 229D(6th ed. 2003).

- Granting Jailers the addition of a shift differential would push their wages above the new salary schedule and disrupt the equitable compensation relationship with other bargaining units.
- For Jailers to receive a greater increase than the other bargaining units, and to receive it through arbitration, can have an adverse effect on morale.⁷
- Jail Sergeants, like Jailers, recently sought a shift differential in arbitration, which was rejected by Arbitrator Miller.⁸
- Arbitrator Miller found that the factor of internal consistency among County bargaining units strongly supports the Employer's position for no shift differential.
- Arbitrator Miller found that granting Sergeants an additional pay increase, in the form of shift differential, would propel their wages above the new salary range and disrupt the equitable compensation relationships with other bargaining units.
- Arbitration Miller found that this would be unfair, especially to those bargaining units who already settled for 2015-2017.
- The Employer urges the instant Arbitrator to adopt the same rationale and conclusion.
- To award Jailers a shift differential considering they work in close proximity with Sergeants and Deputies, who also work night shifts, will undoubtedly expose the Employer to whipsawing in future negotiations.
- To award Jailers shift differential will undermine the process of collective bargaining and allow them a windfall through arbitration they are unable to achieve at the bargaining table.
- In the absence of a quid pro quo offer arbitrators generally maintain the status quo, unless there is a showing of a compelling need - it is not enough to simply assert a need.⁹

⁷ AFSCME Council 65 and Carver County, BMS Case No. 10-PN-423 (Fogelberg, 2011).

⁸ Nobles County and Minnesota Teamsters Public Law Enforcement Employees' Union, Local 320, BMS Case No. 15-PN-0458 (Miller).at 9.

- The Union clearly has the burden of justifying a deviation from the established settlement pattern of no shift differential payments for any of the Employer's bargaining units.
- As was the case in the recent Sergeant arbitration, the Union has failed to establish a case for shift differential.
- Absent compelling evidence of the need for change, which is totally lacking here, the Arbitrator should maintain the Employer's internal compensation relationships.
- The Union's argument that Jailers should receive a shift differential because Deputies bid night shifts, based on seniority, is clearly a distinction without a difference.
- There is no evidence why the work of a Deputy working night shift is any less onerous or demanding than that of a Jailer.
- The evidence simply does not support granting higher wage increases to the Jailers than the increase negotiated by the Employer' other bargaining units.

WAGES:

- Although the Employer and Union have identical wage positions for 2016 and 2017, they differ slightly for 2015.
- The Employer position for 2015 is the pattern negotiated with its other bargaining units, while the Union position is for a shift differential in addition to this pattern.¹⁰
- None of the other bargaining units, including Deputies and Jail Sergeants who work nights, received a shift differential in addition to the settlement pattern.

⁹ Faribault County and LELS, BMS Case No. 12-PN-1086 (Toenges, 2012).

¹⁰ At the hearing the Parties stipulated that the Union's final position was the same as all the other bargaining units – movement into the new 2014 wage schedule and eligibility for step movement on the employees anniversary date subject to satisfactory performance.

- The Employer vigorously contends that if the Union were to receive a shift differential, the negotiated outcome would not have included a one percent (1%) general increase for 2015.
- It is counter to the principles of collective bargaining to award a shift differential to the Union in addition to the pattern wage settlement with other bargaining units.
- To award the Union shift differential in addition to the pattern settlement would result in the Union receiving a benefit it would not have obtained at the bargaining table.
- The Union simply cannot have it both ways for to receive shift differential, in addition to the negotiated pattern settlement with the other bargaining units, would be manifestly inequitable.
- The Union's argument that awarding a 1% increase in addition to shift differential will keep Jailers wage rate competitive with Region #8 is irrelevant, because under either the Union or Employer wage position the Employer's wage rates will be well above Region #8 averages.
- The generally accepted standard in interest arbitration is for the arbitrator to award what the parties would have settled on, if they had reached a voluntary settlement.¹¹
- For the foregoing reasons, the Arbitrator should award the County's position and deny shift differential.

DISCUSSION

The essence of the dispute in the instant matter is whether Jailers should be awarded a shift differential. And, if so, should they also receive a 1% general

¹¹ Hennepin County and Hennepin County Sherriff's Association BMS, Case No. 10-PN-0776 (Jacobs, 2010).

increase for 2015, which is included in the settlement pattern negotiated with the Employer's other bargaining units.

In interest arbitration, arbitrators give considerable deference to the standard set forth in Minnesota Statutes:

179A.16, subd. 7. In considering a dispute and issuing its decision, the arbitrator or panel shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations.

The Employer introduced considerable evidence showing the relationship of economic conditions in Nobles County with the other eight counties in Minnesota Economic Development Region #8. The record shows that the population of Nobles County is similar to the average of the other eight counties. Other comparison factors included were tax capacity, net taxes, tax levy and tax rate. Although over time there have been some changes in how Nobles County compares to the other counties in Region #8, the evidence does not support inability to pay the cost of the Union's position.

Both Parties present cogent arguments in support of their respective positions. The Union presents argument regarding working conditions in the Jail and the effect night work and rotating shifts have on family life. The Union further argues that there is undue turnover among Jailers and that a shift differential would help reduce turnover.

The Employer presents argument that the existing wage is a competitive market rate that already takes into account Jailer work and the working conditions. The Employer further argues that it has experienced little, if any, wage related turnover among Jailers and there is no problem in maintaining full staff. The Employer argues that some Jailers left to become licensed peace officers and there is no evidence that anyone left for a higher paid Jailer position.

The Employer conducted a job evaluation and wage study in 2014. Purpose of the study was to ensure that jobs were correctly evaluated, wage rates were competitive and wages rates paid were in compliance with the Minnesota Pay Equity Act. As a result, a new wage structure was established. The wage of Jailers, as well as all other employees, was incorporated into the new wage structure. Depending on where an employee's 2014 wage rate fell in the new wage structure, Jailer wages are estimated to increase anywhere from 10.65% to 21.08% during the term of the 2015 – 2017 contract.¹² The 2015 pattern settlement with the Employer's other bargaining units provided for the wage increase resulting from movement into the new wage structure, plus a 1% general increase.

The Employer is opposed to Jailers being awarded a shift differential for the following reasons:

1. The Jailer wage is competitive and takes into consideration the type of work and working conditions,
2. Deputies and Jail Sergeants, who have contact with Jailers and work a similar schedule, do not have a shift differential. In fact no employee working for Nobles County receives a shift differential.
3. None of the Employer's other bargaining units have a shift differential.
4. Awarding a shift differential to Jailers will be considered inequitable by other essential workers and will lead to whipsawing in future negotiations.
5. In a recent arbitration, Jail Sergeants were denied a shift differential.

The record shows how the Employer's wage rate for its Jailers compares favorably with other counties in the same Economic Development Region (Region #8), along with that of contiguous counties.¹³ Among the nine Region 8 counties, the Employer's 2015-2017 wage ranks second highest and is highest among contiguous

¹² Union Exhibit #15.

¹³ Employer Exhibit #1, pgs.35-38.

counties.¹⁴ Five of the nine Region 8 Counties pay a shift differential. It is difficult to determine how the shift differential affects their total wage rate, due to a variety of shift differential rates and conditions under which it is paid. It can be assumed that the shift differential paid by other comparison counties was a factor taken into consideration during the Employer's 2014 job evaluation and wage study.

Arrangements for covering nights and weekend work can vary. In cases, like the instant case, Jailers and Jail Sergeants rotate night and weekend shifts. Proponents of this arrangement consider it equitable that all employees share equally in all shifts. This arrangement also allows for a mix of experienced employees working with less experienced employee facilitating training and enhancing work quality. Critics of the rotation arrangement dislike the disruption in their lives when rotating from nights to days and alternating weekends.

Another common arrangement is that followed by Nobles County Sheriff's Deputies, who bid their shift preference. This usually is based on seniority and favors longer-term employees. Critics of this arrangement have concern that junior less experienced employees typically work nights and weekends, when work demands are often greatest. Also the prospect of working only nights and weekends, possibly for many years, can be a deterrent in recruiting new employees.

The Employer argues that a shift differential is an incentive to attract workers to less desirable shifts and is not applicable in the instant case. This is because the work schedule is designed so all Jailers share in all shifts and there is no shift schedule which is more or less desirable than any other.

Absent compelling circumstances, arbitrators are reluctant to award a significant change in contractual terms and conditions the Parties have established through

¹⁴ It is noted that one of the eight comparison counties in Region #8 has not yet settled for 2016 and three have not yet settled for 2017.

mutual agreement. The evidence does not support a compelling circumstance in the instant matter. Further, where an internal settlement pattern has been established with all other employees, such as in the instant case, arbitrators generally sustain the internal settlement pattern for equity and morale reasons.

FINDINGS

1. The settlement pattern negotiated between the Employer and all of its six other bargaining units establishes a convincing precedent for what could be expected from a voluntary settlement between the Employer and the Jailer Unit.
2. This settlement pattern is particularly significant considering that two of the six units are essential employee units, subject to 24-hour-seven-day operations, with no shift differential.
3. Of unquestionable significance, in the instant matter, is the recent arbitration case involving Jail Sergeants, where the arbitrator denied their position for a shift differential.
4. The wage position of the Employer provides a competitive market position, which has been established through a recent job evaluation and wage study.

AWARD

The Union's position for a shift differential is denied.

The Employer's position for wages in accordance with the settlement pattern with its six other bargaining units is awarded.

The wage rate for 2015 shall include the 1% general increase as provided for all other bargaining units.

CONCLUSION

The Parties are commended on the professional and thorough manner with which they presented their respective cases. It has been a pleasure to be of assistance in resolving this disputed matter.

Issued this 19th day of February 2016 at Edina, Minnesota.

ROLLAND C. TOENGES, ARBITRATOR